

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7440

Petition of Entergy Nuclear Vermont Yankee,)
LLC, and Entergy Nuclear Operations, Inc., for)
amendment of their Certificates of Public Good)
and other approvals required under 10 V.S.A.)
§§ 6501-6504 and 30 V.S.A. §§ 231(a), 248 &)
254, for authority to continue after March 21,)
2012, operation of the Vermont Yankee Nuclear)
Power Station, including the storage of spent-)
nuclear fuel)

Order entered: 9/5/2008

SECOND ORDER RE: INTERVENTIONS

Introduction

In this Order, the Vermont Public Service Board ("Board") considers motions to intervene filed by the Vermont Public Interest Research Group ("VPIRG"), the Conservation Law Foundation ("CLF"), the Vermont Electric Cooperative, Inc. ("VEC"), Richard Czaplinski, Associated Industries of Vermont ("AIV"), and John Greenberg. As explained herein, we grant VPIRG's, CLF's, VEC's, and AIV's motions on a permissive basis; their interventions are limited to the interests identified in their motions. We also deny the motions of Mr. Czaplinski and Mr. Greenberg.

Procedural History

On August 18, 2008, CLF requested intervention in this proceeding. CLF states that it is an environmental organization dedicated to the protection and responsible use of New England's natural resources, including those that could be affected by the generation, transmission, and use of electric power. CLF states that it has members in Windham County, as well as elsewhere in Vermont and New England, who may be affected by the Board's decision in this proceeding,

which CLF states will have a significant impact on the energy, electricity, economic, and environmental future of Vermont and the region.

On August 18, 2008, Richard Czaplinski also sought to intervene. Mr. Czaplinski stated that, as a resident of Vermont, he would be affected by any costs that may arise from continued operation of the Vermont Yankee Nuclear Power Station ("Vermont Yankee"). In addition, he asserts that he has special experience in nuclear matters that may be useful to ensuring that a proper analysis of a range of issues is performed.

On August 19, 2008, VEC filed a motion to intervene. VEC states that it has a history of purchasing energy from Vermont Yankee and would consider such purchases in the future.

On August 20, 2008, VPIRG moved to intervene, asserting that it is a private, Vermont non-profit corporation whose mission is to promote and protect the health of Vermont's people, environment, and locally-based economy. VPIRG asserts that its members are affected by the continued production and sale of electric power at Vermont Yankee, citing environmental, safety, aesthetic, and economic (including reliability) interests.

On August 21, 2008, the Vermont Department of Public Service ("Department") filed a letter stating that it had no objection to CLF's and Mr. Czaplinski's motions to intervene.

On August 22, 2008, AIV filed a motion to intervene. AIV states that it is a statewide association representing Vermont's industrial and business community, including manufacturers that are major consumers of electricity, whose interests in supply, reliability, and cost of electricity could be significantly affected.

Also on August 22, 2008, John Greenberg moved to intervene. Mr. Greenberg indicated that he is a ratepayer of Central Vermont Public Service Corporation and that he lives approximately 15 miles west of Vermont Yankee. He states that this proximity places him at risk from Vermont Yankee's operations.

On August 25, 2008, Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc. (jointly, "Entergy VY") filed a response to the motions of VPIRG, CLF, and Mr. Czaplinski. Entergy VY stated that it did not object to VPIRG's and CLF's intervention on a permissive basis, so long as the interventions are limited to the interests that each has identified. However, Entergy VY noted that CLF's motion, in particular, was very broad and overlaps

significantly with the interests of VPIRG and the New England Coalition, which raises the question of whether the Board should exercise its authority under Board Rule 2.209(C) to require coordination among parties. Entergy VY asks that the Board "not only encourage parties to coordinate but make clear its intention to require coordination of discovery and the presentation of evidence as necessary to ensure efficient docket management."

Entergy VY also objected to Mr. Czaplinski's intervention request. Entergy VY asserts that he has failed to identify a substantial interest that may be affected by this proceeding. In addition, Entergy VY contends that the interests he has identified will be adequately protected by the Department and the Vermont Agency of Natural Resources ("ANR").

On August 26, 2008, VPIRG responded to Entergy VY's filing stating that Entergy VY had not accurately characterized the scope of VPIRG's interests. VPIRG asserts that its interests relate to all of the criteria of 30 V.S.A. § 248, as well as Sections 231 and 254 of Title 30 and 10 V.S.A. § 6522.

On August 26, 2008, the Department stated that it had no objection to granting the intervention requests of VPIRG, AIV, and John Greenberg on a permissive basis.

On August 29, 2008, Entergy VY filed a response to the motions submitted by AIV and Mr. Greenberg. Entergy VY states that it does not object to AIV's intervention and would be willing to coordinate with AIV to the extent their interests align. Entergy VY objects to Mr. Greenberg's intervention. Entergy VY contends that Mr. Greenberg has not identified a substantial interest that may be affected by this proceeding. In addition, Entergy VY asserts that the interests Mr. Greenberg identifies will be adequately protected by the Department, ANR, and other parties.

On August 29, 2008, the Windham Regional Commission ("WRC") electronically filed a memorandum supporting Mr. Greenberg's intervention. WRC argues that Mr. Greenberg has demonstrated personal interests and an ability to contribute to the process that is different from ratepayers as a whole. WRC also contends that, although the Department and ANR are responsible for representing the interests of the people of the state, they cannot reasonably represent all interests; WRC maintains that Mr. Greenberg would offer different perspectives.

On August 29, 2008, Mr. Greenberg filed a response to Entergy VY's objection. Mr. Greenberg observes that his close proximity to Vermont Yankee represents an interest different from ratepayers as a whole because he would be significantly affected by an accident at the Station.

Board Discussion and Conclusion

We hereby grant the motions to intervene filed by VPIRG, CLF, VEC, and AIV on a permissive basis. The scope of the intervention for each is limited to the interests identified by the party.¹

We also deny the motions to intervene submitted by Mr. Czaplinski and Mr. Greenberg. Under Board Rule 2.209(B), a person seeking intervention must demonstrate a substantial interest that may be affected by the outcome of the proceeding. The Rule provides that in exercising its discretion to allow intervention under this rule

the Board shall consider (1) whether the applicant's interest will be adequately protected by other parties; (2) whether alternative means exist by which the applicant's interest can be protected; and (3) whether intervention will unduly delay the proceeding or prejudice the interest of existing parties or of the public.

Here, neither Mr. Czaplinski nor Mr. Greenberg identified a substantial interest that may be affected by the outcome of this proceeding. Instead Mr. Czaplinski cites only to a generalized interest that is no different from that of ratepayers in general and Mr. Greenberg identifies an interest that he holds in common with all residents living within 15 miles of Vermont Yankee. In addition, Mr. Greenberg relies heavily upon his concerns about the risks of an accident occurring at Vermont Yankee. However, this concern is largely an issue of radiological safety, an area in which the Board is preempted (as explained in footnote 1).

These generalized interests identified by Mr. Czaplinski and Mr. Greenberg do not rise to the level of a substantial interest as required by the Board's Rule. Moreover, the general concerns

1. We note that, in addition to being limited to the interests identified in each party's motion, the scope of intervention is also limited to issues within the Board's jurisdiction. For example, as we have previously observed, the Board is preempted from consideration of radiological health and safety, although the Board retains jurisdiction to act within areas of traditional state responsibility, such as need, reliability and cost. *See* Docket 7082, *Petition of Entergy Nuclear Vermont Yankee and Entergy Nuclear Operations*, Order of 4/26/06 at 14–16.

of the public are already represented by the Department as part of its duty to represent the interests of the people of the state. For these reasons, we deny the motions to intervene.

So ORDERED.

Dated at Montpelier, Vermont, this 5th day of September, 2008.

<u>s/James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: September 5, 2008

ATTEST: s/Judith C. Whitney
Deputy Clerk of the Board

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